

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2212 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SURUBHA GOVUBHAI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR PAHWA FOR MRS. SUMAN PAHWA for Petitioner
MR SS PATEL AGP for Respondent No. 1
MR BT RAO Standing Counsel for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner herein challenges the order of

preventive detention dated 6th March, 1999 made by the State Government under Section 3 of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as, 'the Act'].

3. The petitioner herein is a Manager in Jay Ambe Petroleum Services, situated at Kalol, District-Mehsana [hereinafter referred to as 'the Petrol Pump']. Upon inspection, the stock of diesel maintained by the Petrol Pump was found to be adulterated. Upon analysis of such adulterated diesel, it was found to be adulterated by controlled kerosene which is supposed to be distributed amongst the domestic consumers, at a subsidized rate. The said illegal activity is alleged to have been committed by the owner Jayantilal D. Shah with the connivance of the present petitioner. Thus, the petitioner and the owner of the petrol pump are alleged to have used controlled kerosene for adulteration of diesel with a view to making personal gain. This has also resulted into disruption of the supply of controlled kerosene. Pending the proceedings against the petitioner and the owner Jayantilal, the licence for diesel was initially suspended for 90 days and it has since been cancelled. After the orders of detention were made, the licence for petrol also was cancelled. However, the implementation of the order of cancellation of the said licence has been stayed by the Government in revision preferred before it.

4. The impugned order of detention has been challenged on the grounds : (a) the representation made to the Central Government has not been expeditiously dealt with, and the unexplained delay in dealing with the representation has vitiated the continued detention of the petitioner; (b) the licence for diesel having been first suspended and then cancelled, the petitioner has been put out of the sphere of mischief and no further preventive action was required to be taken against the petitioner, and therefore, the continued detention is not warranted; (c) the petitioner being an employee, he would not be covered under Clause (b) of the explanation to Section 3 (1) of the Act and as such, he could not have been detained under the said provisions, the impugned order of preventive detention is, therefore, not tenable; (d) the impugned order is actuated by malafide; (e) in any view of the matter, supply of adulterated articles/commodities is not covered by the provisions contained in Section 3 (1) of the Act and as such no action could have been taken against the petitioner under the Act; and (f) the impugned order has been made after a

long delay from the date of inspection. In support of his arguments, Mr. Pahwa has relied upon the judgment of Allahabad High Court in the matter of Sri Niwas Agrawal & Anr. v. State of U.P & Ors., [1983 Criminal Law Journal 21] and of this Court in the matters of Narendrakumar Pranlal Gandhi & Ors. v. State of Gujarat & Anr., [1982 Cr.L.J 1682] and of Kishore Amratlal Patel S/o. Detenu Amratlal Mohanlal Patel. v. Rajiv Takru & Ors. [1987 (2) GLR 1031]. He has also relied upon the judgements of the Supreme Court in the matters State of Madras v. A. Vidyanath Iyer [AIR 1958 SC 61] of Sirsilk Limited & Ors. v. The Textile Committee & Ors. [AIR 1989 SC 317]; and of Deputy Chief Controller of Imports & Exports, New Delhi v. K.T Kosalram & Ors. [AIR 1971 SC 1283].

5. The petition is contested by the learned AGP Mr. Patel and learned advocate Mr. Rao. Mr. Patel has submitted that having regard to the provisions contained in Section 3 (1) of the Act, the same are not confined to the owners of the business and same can be attracted in the matters of employees as well. He has therefor relied upon the judgment of this Court in the matter of Nareshkumar Ambalal Modi v. State of Gujarat & Ors. [1989 (1) GLR 288]. Mr. Rao has relied upon the affidavit made on behalf of the Government of India. It is submitted that the representation made on behalf of the petitioner was considered as expeditiously as possible and the order of detention would not be vitiated on the said ground.

6. I am afraid, I cannot agree with any of the contentions raised by Mr. Pahwa. It appears that a representation was made on behalf of the petitioner on 13th March, 1999 and was sent both to the Union Government as well as the State Government. The Union Government had received the said representation on 15th March, 1999 and had called for the opinion of the State Government on 16th March, 1999. The same was sent by the State Government on 18th March, 1999 and was received by the Union Government on 22nd March, 1999. It is stated that the para-wise comments sent by the State Government was received by the concerned section on 26th March, 1999. The following three days being holidays, the representation was attended to on 30th and 31st March, 1999 and was rejected on 1st April, 1999. It is argued that if the representation alongwith parawise comments sent by the State Government were received on 22nd March, 1999, there was no reason why the concerned authority should have waited for another set of parawise comments and should not have dealt with the representation soon after 22nd March, 1999. In fact, the Union Government

should have considered the representation made by the petitioner on 22nd March, 1999 itself without waiting for further parawise comments. It does appear that the affidavit made on behalf of the Union Government is not clearly worded. It is stated that the representation was received on 22nd March, 1999, through the State Government vide its letter dated 18th March, 1999 and para-wise comments of the State Government was received in the concerned Section on 26th March, 1999. To me it appears that the composite material i.e., the representation sent through the State Government and the parawise comments sent by the State Government were received by the concerned Section on 26th March, 1999. I believe that the concerned officer could not have attended to the matter before the composite material was placed before him. Since the entire material was received by him on 26th March, 1999, followed by three consecutive holidays, the decision rendered on 1st April, 1999 cannot be said to be belated. Though it is not clearly stated that the representation was under active consideration on 30th & 31st March, 1999, I am of the view that no undue importance is required to be given to unexplained two days. It transpires that the inspection was carried out on 21st August, 1998, the sample of diesel was collected and sent for analysis. The adulteration by addition of controlled kerosene was detected only when the analysis reports were received. Pursuant to the said reports, initially the licence was suspended and thereafter cancelled on 1st February, 1999. Against which, an appeal was preferred. The said appeal too was dismissed on 17th February, 1999. Thereafter, the action has been taken under the Act in the month of March, 1999. Considering these dates, it cannot be said that the action under the Act has been taken belatedly. The interregnum period has been explained as aforesaid by the affidavit made on behalf of the State Government. The question is whether even after cancellation of the licence for diesel, the preventive action under the Act was necessitated. Be it noted that the Petrol Pump had a licence for dealership of diesel as well as of petrol. Even after cancellation of licence for the dealership of diesel, there was a possibility of the dealer adulterating the petrol as well. Besides, the petitioner herein is not a licence holder but an employee of the licence-holder. There was a possibility of petitioner's joining some other Petrol Pump and using his experience gained at the petrol pump in question. The preventive action taken against the petitioner, even after cancellation of licence, therefore, cannot be said to be unwarranted. No fault can be found with the satisfaction recorded in this respect.

7. Mr. Pahwa has submitted that the impugned order has been made under clause (b) of the explanation to Section 3 (1) of the Act. He has contended that the said clause (b) is applicable in the cases of the dealers who hold a valid licence granted under the Gujarat Essential Articles [Licencing, Control & Stock Declaration] Order, 1981 {hereinafter referred to as, 'the Order'}. The petitioner was an employee in the Petrol Pump and did not possess a licence under the Order. The petitioner not being a licensee, clause (b) to the explanation is not applicable and the impugned order made under the said clause is without the authority of law. He has submitted that the words, 'dealing in' appearing in clause (b) of the explanation are not defined in the Act. It is, therefore, imperative to resort to an external aid and to give a proper meaning to the said words, 'dealing in'. He has relied upon the objects and reasons and has submitted that the Act has been enacted in furtherance to the Essential Commodities Act, 1955 and to make it more effective. The order has been issued by the State Government under the powers conferred upon it under Section 3 of the Essential Commodities Act, 1955. Hence, all the three enactments having been passed in furtherance of the common object, the meaning given to the words, 'dealing in' in the order is required to be adopted. I am unable to agree with this contention either. Firstly, the impugned order is made under Sub-section 3 (1) of the Act. It, therefore, cannot be said to have been made under clause (b) of the explanation to Section 3 (1) of the Act alone. Secondly, the words 'dealing in' occurring in the said clause (b) or the word 'dealer' are not defined in the Essential Commodities Act, 1955 and the definition provided in the Order does not refer to a licenced dealer. Thirdly, the Act and the Essential Commodities Act, 1955 and the Order cannot be said to be the enactments in the same subject matter. Fourthly, though the Order is statutory in character, it cannot be said to be a Statute by the same Legislature.

8. In the matter of State of Madras v. A. Vidyanatha Iyer [Supra], the Court was considering the meaning of the words, 'shall presume' occurring in the Prevention of Corruption Act, 1947. The Court held that, '...it introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the Legislature has chosen to have used the words, 'shall presume' and not 'may presume', the former 'a presumption of law' and later of fact. Both these phrases have been

defined in the Indian Evidence Act, nodoubt for the purpose of that Act but Section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of Law of Evidence, e.g., presumptions, and therefore, it should have the same meaning." In the said case, both the Corruption Act, 1947 and the Evidence Act were central legislations and the provision in question deals with the same subject i.e., presumption under the Law of Evidence. While in the present Act, though the Act is the Central Legislation, the order relied upon by Mr. Pahwa is an order issued by the State Government under the powers conferred upon it under Section 3 of the Essential Commodities Act, 1955. Besides, though the Act has been enacted with a view to making Essential Commodities Act and the Orders made thereunder more effective, they cannot be said to be dealing in the same branch of law i.e., preventive detention. In the matter of The Sirsilk Limited & Ors. [Supra], the Court was considering the meaning of the words, 'Yarn' occurring in the Textile Committee Act. The Court held that, `... the Industries [Development & Regulation] Act, 1951 and the Textile Committee Act may properly be considered to be statutes in pari materia. The object of either of these two Acts is to protect and to assist in the development of Textile Industry.' Reproducing an excerpt from the interpretation of Statutes by MAXWELL [p-66], the Court held that, 'the Industries [Development & Regulation] Act, 1951 is an Act earlier in point of time and we see no reason why if a subsequent statute by the same Legislature can be pressed in aid for the purpose of interpreting in the event of any doubt, the provisions of an earlier statue, the earlier statute cannot be made use of for the purpose of construing in the event of ambiguity, the provision of later statute.' In the present case, the Act under consideration and the order relied upon by Mr. Pahwa cannot be said to be statute of the same legislation, and therefore, in my view the words, 'dealing in' occurring in Clause-b cannot be interpreted to mean 'a dealer who holds a lawful licence to deal in a particular essential commodity.' Similarly, in the matter of Deputy Chief Controller [Supra] also, the Court has held that, 'what particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of subject matter, the purpose or intention of the author and the affect of giving to them one or the other permissible meanings on the object to be achieved...' The same being the matter where interpretation of a licence issued under the Import & Export [Control] Act. The Allahabad High Court in the matter of Sri Niwas Agrawal [Supra] has undoubtedly taken

a view that the aforesaid clause-b applies to a 'dealer' and would not apply to a 'sales man'. However, I am unable to agree with the said view. If such a view were accepted, the words 'dealing in' appearing in Clause (b) of the explanation will take a different meaning in every state and the Union Territory, depending upon the nature of the orders issued by the concerned State or the Union Territory. In that case, Section 3 of the Act cannot be uniformly applied. Moreover, the words 'dealing in' have not been defined either in the Essential Commodities Act, 1955 or the Order. The word 'dealer' is defined in the Order as under :-

'Dealer means a person, a firm, an association of persons, a company, a corporation or a cooperative society, engaged in the business of purchase, sale, storage for sale of any essential articles, whether or not in conjunction with any other business and includes his representative, agent or as the case may be, the commission agent, but does not include -

- (a) xx xx xx
- (b) xx xx xx

As it is apparent, this definition also does not refer to a licence to be obtained under the Order and also includes the agents or representatives. It, therefore, cannot be held that Clause (b) of the explanation can be applied to a case of a 'dealer' holding a valid licence under the Order. On the facts of the present case, the decision in the matter of Narendrakumar Pranlal Gandhi & Ors. (Supra) shall have not applicability.

9. Clause (b) to Section 3 (1) reads as under :-

'Dealing in any commodity, which is (a) essential commodity as defined in the Essential Commodities Act, 1955 or (b) with respect to which provisions have been made in any such other law as is referred to in Clause (b) with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provision of that Act or other law, aforesaid.'

In my view, the words 'dealing in' occurring in Clause (b) of the explanation is required to be given simple

dictionary meaning. According to Oxford Concise Dictionary, the meaning of the words, 'dealing in' [in the context of the present case] is : Sell or be concerned with commercially. Law of Lexicon by P. Ramnatha Aiyar has given the meaning of words, 'dealing in' as distributing. A dealer is one who distributes. Dealer means 'engaging in a business of purchase, sell, storage or distribution to purchasers.' Neither of these meanings suggest that a dealer has to be a licenced dealer or the owner of the business alone can be said to be dealing in in the particular commodity. I am, therefore, of the opinion that any person who is engaged in purchasing, storing, selling or distributing a commodity can be said to be a person dealing in that commodity. He may be dealing in the commodity either as an owner, or as an agent, or a representative of the owner or an employee of the owner. Besides, even the objects and reasons of the Act do indicate that the provisions contained in the Essential Commodities Act and the Orders made thereunder are not adequate to deal effectively with malpractice like Blackmarketing, hoarding, profiteering, etc. The Act had to be enacted to effectively deal with these kinds of malpractices and to arrest the unjustified rise in prices of essential commodities by providing for the preventive detention of persons likely to indulge in such practices. The aforesaid object also fortifies the view that I have taken in respect of the Act being applicable to the Managers of the business also. The Division Bench of this Court in the matter of Nareshkumar Modi [Supra] has negatived a similar contention. This Court has held that, '..thus, it is clear from the bare perusal of the said sub-section that it not only includes a dealer but any person who is coming within the compass of the meaning assigned to the words acting in any manner prejudicial to the maintenance of supplies of essential commodities.'

10. The contention that supply of adulterated article/commodity is beyond the scope of Section 3 of the Act also requires to be rejected. It is not the act of adulterating diesel which has warranted the order of detention. The diesel was adulterated with a cheaper substance with a view to making gain. Adulterating material was found to be controlled kerosene and thereby, the supply of the controlled kerosene to the domestic consumers at the subsidized rate has also been disrupted. The activity of the petitioner, therefore, falls squarely within the purview of Section 3 (1) of the Act and the explanation thereto. The order of detention, therefore, has validly been made under the said provision.

11. The facts of the present case leave no doubt that the activities of owner of the business and the petitioner defeats the provisions of the Essential Commodities Act, 1955 and the order made thereunder. The provision contained in Section 3 of the Act could, therefore, be validly invoked against the petitioner as well.

12. For the aforesaid reasons, petition is dismissed.
Rule is discharged.

Prakash*